

BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE

CHERYL ARSENAULT)	
Employee/Grievant,)	
)	DOCKET No. 14-02-603
v.)	ORDER OF DISMISSAL
DEPARTMENT OF CORRECTION,)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on Thursday, November 20, 2014, at the Public Service Commission, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, and Victoria D. Cairns, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Rae Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Kevin Slattery
Deputy Attorney General
on behalf of the Department of Correction

BACKGROUND

A hearing was convened by the Merit Employee Relations Board (MERB) on Thursday, November 20, 2014, to hear the appeal of Cheryl Arsenault (Grievant) against the Department of Correction (DOC).

The Grievant filed a dual appeal to the State Office of Human Resources Management (HRM) and to the Merit Employee Relations Board (MERB) on February 21, 2014, in which she asserted she had been dismissed without just cause.

By decision dated July 3, 2014, the designated HRM Hearing Officer denied the grievance.¹

By letter dated July 30, 2014, the Grievant was requested to advise MERB as to whether she wished to proceed to hearing on an appeal to the full MERB. The letter was sent by certified mail and an acknowledgement of receipt was signed and returned to MERB on August 4, 2014. The Grievant did not respond to MERB's request.

By letter dated October 30, 2014 (and again sent by certified mail), MERB advised the Grievant and DOC that the Board would consider, *sua sponte*, a motion to dismiss the appeal, based on abandonment by the Grievant at its regular meeting on November 20, 2014. An acknowledgement of receipt was signed and returned to MERB on November 3, 2014.

A quorum of three members of the MERB met to consider a Motion to Dismiss for abandonment of the grievance on Thursday, November 20, 2014. The Grievant was not present or represented at the hearing.

¹ The Step 3 HRM decision was provided to the MERB on July 30, 2014.

DISCUSSION


Delaware courts have held that when a party appeals to an administrative board but does not appear for the hearing, the board may dismiss the appeal for failure to prosecute. *Ringer v. Dept. of Transportation*, Nos. 06-06-360/361 (Sept. 24, 2008), (citing *Han v. Red Lobster*, 2004 WL 1427008, at p. 1 (Del. Super., June 25, 2004)).

The Grievant failed to appear to be heard and to present evidence in support of her appeal. Consequently, this appeal is dismissed.

DECISION AND ORDER

It is this 4th day of December, 2014, by a unanimous vote of 3-0, it is the Decision and Order of the Board to dismiss the Grievant's appeal for failure to appear and present evidence in support thereof, and for abandoning the grievance.


MARTHA K. AUSTIN, MERB Chairwoman


JOHN F. SCHMUTZ, MERB Member


VICTORIA D. CAIRNS, MERB Member

APPEAL RIGHTS

29 *Del. C.* §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof on any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court must be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 *Del. C.* §10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing date: **December 4**, 2014

Distribution:

Original: File

Copies: Grievant
Agency's Representative
Board Counsel
MERB Website